

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

ISAIAH MOSSES COLLEY,  
DAKOTA LEIGH STREET, DION  
ALBERTO GALVAN, BERNICE  
TANYA COLLEY, LYDIA  
RESENDEZ, and DAVID  
MARTINEZ,

Plaintiffs,

v.

BENTON COUNTY,  
WASHINGTON; CITY OF  
PROSSER, WASHINGTON; CITY  
OF CENTRALIA; and LEWIS  
COUNTY, WASHINGTON,

Defendants.

NO. 4:22-CV-5157-TOR

ORDER DENYING DEFENDANT  
CITY OF CENTRALIA'S MOTION  
TO DISMISS AND DEFENDANT  
CITY OF PROSSER'S MOTION TO  
JOIN

BEFORE THE COURT is Defendant City of Centralia's Motion to Dismiss (ECF No. 47) which Defendant City of Prosser seeks to join (ECF No. 51). These matters were considered without oral argument. The Court has reviewed the record and files herein and is fully informed. For the reasons discussed below,

ORDER DENYING DEFENDANT CITY OF CENTRALIA'S MOTION TO  
DISMISS AND DEFENDANT CITY OF PROSSER'S MOTION TO JOIN ~ 1

1 Defendant City of Centralia’s Motion to Dismiss (ECF No. 47) and Defendant City  
2 of Prosser’s Motion to Join (ECF No. 51) are DENIED.

### 3 DISCUSSION

4 Defendants City of Centralia and City of Prosser move to dismiss under  
5 Federal Rules of Civil Procedure 16(f)(1)(C)<sup>1</sup> and 37(b)(2)(A)(v)<sup>2</sup> based on a  
6 purported failure by Plaintiff to fully participate in discovery, failure to pay  
7 awarded attorney’s fees, and failure to amend the Complaint. ECF Nos. 47 at 2–4  
8 and 51 at 2–5. The Ninth Circuit employs a five-factor test to determine whether  
9 sanction in the form of dismissal is proper: (1) the public interest, (2) the court’s  
10 need to manage the docket, (3) the risk of prejudice to the defendant, (4) public  
11 policy favoring disposition of cases on their merits and (5) the availability of less

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12 <sup>1</sup> “On motion or on its own, the court may issue any just orders, including those  
13 authorized by Rule 37(b)(2)(A)(ii)-(vii), if a party or its attorney . . . fails to obey a  
14 scheduling or other pretrial order.” Fed. R. Civ. P. 16(f)(1)(C).  
15

16 <sup>2</sup> “If a party or a party's officer, director, or managing agent--or a witness  
17 designated under Rule 30(b)(6) or 31(a)(4)--fails to obey an order to provide or  
18 permit discovery, including an order under Rule 26(f), 35, or 37(a), the court where  
19 the action is pending may issue further just orders,” which may include,  
20 “dismissing the action in whole or in part.” Fed. R. Civ. P. 37(b)(2)(A)(v).

1 drastic alternatives. *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260–61 (9th Cir.1991)  
2 (quoting *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th  
3 Cir. 1986)). “Dismissal is a harsh penalty and is to be imposed only in extreme  
4 circumstances.” *Henderson v. Duncan*, 779 F.2d 1421, 1423 (9th Cir.1986).

5 In support of the first and second factors, Defendants posit that public  
6 interest is in favor of a speedy resolution of this litigation, which goes hand in hand  
7 with docket management. ECF Nos. 47 at 8 and 51 at 6. While in agreement that  
8 expedient resolution of a dispute is favorable, the Court notes that in the  
9 Scheduling Order, issued on July 3, 2023, parties were directed to contact  
10 chambers to resolve discovery disputes in a timely manner. ECF No. 27 at 6.  
11 Defendants opted to instead file these motions for sanctions. This, in conjunction  
12 with Plaintiffs’ answers to interrogatories on the record, (ECF No. 52), and  
13 Plaintiffs’ counsel’s declaration that attorney’s fees were paid on January 19 (ECF  
14 No. 49), weighs against granting dismissal.

15 As to the third factor, courts determine prejudice to a defendant by  
16 examining whether the plaintiff’s actions impair the defendant’s ability to maintain  
17 trial schedule or threatens to interfere with the rightful decision of the case. *See*  
18 *Rubin v. Belo Broadcasting Corp. (In re Rubin)*, 769 F.2d 611, 618 (9th Cir.1985).  
19 Defendants assert that both cities have faced prejudice because Plaintiffs have  
20 failed to timely amend their complaint. ECF Nos. 47 at 8–9 and 51 at 7–9. The

1 discovery Plaintiffs have responded has, in some cases been non-responsive  
2 overbroad. *Id.*; see also ECF No. 52. Defendants argue Plaintiffs' conduct in this  
3 case has resulted in a delay in their own case management and will ultimately lead  
4 to prejudice. *Id.* Discovery in this matter is not set to close until July 1, 2024.  
5 ECF No. 27 at 4, ¶ 5. Further, Plaintiffs have provided answers to the  
6 interrogatories. *See generally* ECF No. 52. If parties cannot meet the deadline due  
7 to discovery-related issues, Defendants are free to seek an extension in the  
8 scheduling order deadline and contact the Court to sort out disputes. However,  
9 given that the cutoff is still nearly five months away, the Court is not persuaded  
10 that dismissal due to prejudice is warranted at this stage of the proceeding.  
11 Similarly, Defendants are correct that the Court ordered Plaintiffs to amend their  
12 Complaint within a timely fashion which has yet to be accomplished, but it *sua*  
13 *sponte* dismissed the John Doe Defendants, thereby alleviating some of the  
14 confusion surrounding Plaintiffs' claims. ECF No. 41. While the third factor  
15 weighs slightly in favor of dismissal given that Plaintiffs, aided by learned counsel,  
16 have yet to amend their Complaint, it must be balanced in light of the other factors.

17 The fourth factor weighs heavily against dismissal based on procedure when  
18 considered in conjunction with Court's impending consideration of Defendant  
19 Benton County's Motion for Judgment on the Pleadings (ECF No. 50). Plaintiffs  
20 have been cautioned to be more attentive to directives from the Court moving

1 forward (ECF No. 59), however public policy favoring disposition of claims based  
2 on their merit “is particularly important in civil rights cases.” *Eldridge v. Block*,  
3 832 F.2d 1132, 1137 (9th Cir.1987). With the opportunity to hear the merits of this  
4 case approaching, this factor weighs against a sanction in the form of dismissal.

5 While Defendants are correct that the Court has imposed sanctions on  
6 Plaintiffs’ counsel in conjunction with a motion to compel (ECF No. 46), the Fifth  
7 and Sixth factors also weigh against dismissal because, as stated above, the Court  
8 is available to resolve discovery disputes quickly. ECF Nos. 47 at 10, 51 at 10.  
9 Further, Plaintiffs’ counsel has attested that the awarded fees have been paid, and  
10 that efforts have been made to comply with the Court’s Order. ECF No. 49.  
11 Alternative forms of resolution for Defendants’ discovery issues are available, and  
12 dismissal based on Rules 16(f) and 37(b) is too drastic of a measure at this point.

13 **ACCORDINGLY, IT IS HEREBY ORDERED:**

14 Defendant City of Centralia’s Motion to Dismiss (ECF No. 47) and

15 Defendant City of Prosser’s Motion to Join (ECF No. 51) are **DENIED**.

16 The District Court Executive is directed to enter this Order and furnish  
17 copies to counsel. Each party to bear its own costs and expenses.

18 DATED March 12, 2024.



A handwritten signature in blue ink that reads "Thomas O. Rice".

THOMAS O. RICE  
United States District Judge